IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1662 of 2004

with

CRIMINAL MISC.APPLICATION No 9552 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMMADJUNAID SAMSUDDIN SAIYED

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1662 of 2004
   MR LR PATHAN for Appellant No.
   MR AD OZA, PP with MR PR ABICHANDANI, APP
   for Respondent No. 1
2. Criminal Misc.Application No. 9552 of 2004
   MR LR PATHAN for Appellant No.
   MR AD OZA, PP with MR PR ABICHANDANI, APP
   for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 15/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. This is an appeal filed by the original accused of POTA Case No. 4 of 2004 under section 49 of the Prevention of Terrorism Act [for short 'POTA'] against the order passed below Exh. 14 by the Designated Court dated 15th September, 2004. Vide our order dated 8th December, 2004 we have dismissed the appeals by recording as follows :-

"For the reasons to follow, these appeals are dismissed. It is however, made clear that this order of dismissal will not come in the way of the appellants in the event of their filing application for bail before the trial Court."

It is a common order passed in Criminal Appeals Nos. 1626 and 1662 of 2004.

1.1. The appellant herein is being prosecuted before the Designated Court for the alleged commission of offences made punishable under sections 120B, 121, 121A, 122 of the Indian Penal Code and section 25(1) (aa)(e) of the Arms Act and sections 3(3), 20(1), 21(1) and 22 of the POTA. The offence against him is registered as DCB Crime Register No. I - 16/2003 with DCB Police Station at Ahmedabad.

2. The facts, in short, can be stated as under :-

2.1. During the communal riots which rapt the City of Ahmedabad and other parts of the State of Gujarat after the incident which took place at Godhra on 27th February, 2002, which is now known as the Godhra train carnage incident. During those riots, it is stated, that members of Muslim community suffered considerable damage in property as well as loss of life. With a view to take revenge of this, several leaders of Muslim community hatched a conspiracy to strike terror in the Hindu community by killing certain political leaders, police officers, etc. and to achieve that common object many persons belonging to Muslim community were taken in

confidence and they were made part of the conspiracy. To achieve the object of the conspiracy it was decided to have adequate finance and proper training. The finance was meant for purchase of weapons and to send persons to Pakistan to take training in terrorist activities from agencies like I.S.I., Jaish-E-Mohemmed, etc. In this case the police had received information that the aforesaid agencies prepared Muslim youths to kill Dr. Jaydeep Patel, local leader of Vishwa Hindu Parishad and this task was assigned to one Jahidkhan Pathan, Junaid Saiyed - the present appellant and Harith Ansari. It is further case of the prosecution that on 11th December, 2003 the police received a tip that appellant and co-accused Harith Ansari were to visit Naroda area at about 4.00 p.m. where the house of Dr. Jaydeep Patel is situated. In view of the same, police party, under the guidance and in accordance with directions of Additional Commissioner of Police Mr. D G Vanzara, went to the place near Galaxy complex in Naroda. The informant around 5.00 p.m. pointed out two persons standing near Yamaha Motorcycle as the persons to be apprehended. Accordingly, police team rushed and apprehended both the persons, who later on, gave their identity as Mohammadjunaid, son of Samsuddin Saiyed and Harith, son of Shakeel Ahmed Ansari, his co-accused. Upon their search in the presence of panchas, two foreign made pistols and five live cartridges were found. Upon inquiry, the present appellant - Junaid failed to produce requisite licence or permit for possessing those weapons. After completing necessary formalities, both the persons were arraigned as accused in the aforesaid case. In the complaint lodged by one Mr. T A Barot, Police Inspector, City Crime Branch dated 11th December, 2003, complete details of the entire conspiracy and the part played by the present appellant have been narrated which are not required to be reproduced here. The gist of the complaint has already been stated above.

3. The appellant on 2nd July, 2004 submitted an application at Exh. 14 under section 227 of the Code of Criminal Procedure read with sections 26 and 33 of the POTA. It was submitted on the ground that even if the material collected by the investigating agency was believed to be true, no case was made out against the appellant and no offence was disclosed against him muchless offences under the provisions of the Penal Code as well as of POTA. Hence prayer for discharge from the case was made. The learned Designated Judge after detailed hearing of the application, rejected the same by order dated 15th September, 2004 as stated above. It is that order which is now under challenge before this

Court.

4. We have heard Mr L R Pathan, learned counsel for the appellant and Mr. A D Oza, Ld. Public Prosecutor and Mr. P R Abichandani, Ld. APP for the respondent State. It has been submitted by Mr L R Pathan that in the present case so far the appellant is concerned, the provisions of POTA are not at all attracted and the Designated Court therefore, ought to have transferred case to the Court having jurisdiction. He has further submitted that the act alleged against the appellant does not fall within the definition of terrorist act under POTA. He has also submitted that if the statements of the co-accused are taken out, nothing remains against the appellant since there is no confessional statement given by him. According to him, confessional statements of accused can be relied upon only against maker of it and not against any other co-accused. He has further submitted that from the appellant only some weapons are found, which at the most may take his case under the Arms Act; but by no stretch of imagination it can be said that he has committed offence under the POTA. He has further submitted that only one statement that of Alimohmed Rajkumar Noormohmed Saiyed refers to the name of the appellant. He has further submitted that though the role that appears to have been played by this witness as per his own statement is graver than the role of the appellant, Rajkumar is cited as a witness and not as an accused. He has emphatically submitted that the investigating agency cannot resort to pick and choose policy and not make Rajkumar an accused of the case. He has, therefore, submitted that this Court may direct the investigating agency to implead him as an accused and also may not take into consideration his statement. Lastly, he has submitted that if Rajkumar's statement is taken out, there remains nothing against the appellant and he deserves to be discharged from the case.

4.1. As against that, Mr. Oza, Ld. PP appearing with Mr. Abichandani has submitted that the statement of Alimohmed @ Rajkumar is eloquent enough to specify the role played by the appellant. According to him, apart from the said statement, there are confessional statements of co-accused which can be relied on by the Court to assess the role of the appellant. Lastly, he has submitted that considering the fact that this is a case for conspiracy, confessional statement can be brought into aid vis-a-vis the other accused also. He, therefore, submits that this appeal has not merit and deserves to be dismissed.

5. We have carefully perused the record of this appeal. We have also perused the statement of Rajkumar, copy whereof has been supplied to us. We have considered the submissions advanced by the counsels of both the sides. The material on record and in particular the first information report lodged by Mr. T A Barot, clearly shows that the appellant was one of the key persons who were supposed to accomplish the main objects of the conspiracy. The aim of the conspirators was elimination of various leaders of Hindu organisations such as Vishwa Hindu Parishad and Rashtriya Sevak Sangh. One of such intended victim was Dr. Jaydeep Patel. It is also clear from the first information report that on 11th December, 2003 the police had received a tip from its informant that to keep watch over the movement of Dr. Jaydeep Patel, the appellant as well as Harith Ansari were to go to a place near Galaxi complex in Naroda area where the house of Dr. Jaydeep Patel is situated. Accordingly, the police team had been there and they had apprehended these two persons from that place at about 5.00 p.m. Foreign made weapons were recovered from the appellant together with five live cartridges. He did not hold any licence for possessing these arms. This lends considerable support to allegation about the involvement of the appellant in the conspiracy. We have also perused the statement of Alimohmed @ Rajkumar Noormohmed recorded on 17th December, 2003 by the Ld. Metropolitan Magistrate, Court No. 16, Ahmedabad. The statement of this witness reveals that he had met one Sadabkhan who had informed him that revenge of the loss suffered by the members of the Muslim community of life as well as of property was to be taken and for that the political leaders as well as leaders of Vishwa Hindu Parishad who had taken part in such riots, were to be killed. He has also informed him that one Javedkhan was doing this work. Next day the witness happened to meet Javedkhan Janed Saiyed, the present appellant and Sadabkhan and also one Rafiq and Rauf. At that time also Javedkhan informed the witness that leaders like Gordhanbhai Zadfiya, Mayaben Kodnani, Dr. Jaydeep Patel, Babubhai Bajrangi and Kamlesh Tripathi were to be killed. He also states about the work assigned to present appellant and Harith Ansari; that was to keep watch over the movements of Vishwa Hindu Parishad leaders and Dr. Jaydeep Patel. It also reveals that with aforesaid people one Abutalha was associated, who happened to be the agent of I.S.I. The statement of this witness further shows that on knowing about the conspiracy and its objects, he had got scared and he had told that since there was communal harmony prevailing in the city, nothing of the sort was required to be done and he had no interest in such conspiracy. The statement of

this witness, therefore, makes it very clear that at no point of time he had shown his willingness to be a part of conspiracy and to participate in carrying out main objects of the conspiracy. It clearly shows that he happened to meet Sadabkhan and Javedkhan so also present appellant and Harith Ansari and he came to know about their involvement in the conspiracy. Thus, there is hardly anything in this statement which may require the investigating agency to implead him as an accused in the case. The statement on the contrary shows that he can be the best witness so far the persons who had been named in his statement are concerned. We are, therefore, not inclined to accept the statement of Mr L R Pathan on this aspect. Even assuming that the confessional statements of the co-accused cannot be relied upon to fasten the liability on other accused, in the present case so far as the appellant is concerned, there is prima-facie material showing his involvement in the conspiracy and also active participation. The object of the conspiracy and the acts which are required to be performed by the conspirators certainly fall, prima-facie, within the definition of terrorist activity. In that view of the matter, at this stage, the appellant cannot be allowed to go without facing the trial. His application for discharge, therefore, does not have any merit. We have seen the reasoning of the learned Judge and we find nothing wrong with it. In that view of the matter, this appeal is dismissed.

In view of the above, Criminal Misc. Application does not survive and it is disposed of accordingly.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

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